

# Georgia Department of Public Safety

## Policy Manual

SUBJECT <b>ASSET FORFEITURE</b>	POLICY NUMBER <b>12.05</b>
DISTRIBUTION <b>ALL SWORN MEMBERS</b>	DATE REVISED <b>1/31/2006</b>

### 12.05.1 Purpose

To establish procedures and ensure uniformity for processing seized assets subject to forfeiture and for tracking and recording the disposition of all such assets or asset proceeds.

### 12.05.2 Policy

Department of Public Safety (DPS) shall actively seize any property that is subject to forfeiture under state and federal law when the forfeiture of such property would deter or prevent criminal activity. DPS employees shall comply with federal and state law and federal procedures applicable to seized assets subject to forfeiture. Members of this Department participating in asset seizures shall cooperate fully with all law enforcement and prosecuting agencies so as to best serve public safety.

### 12.05.3 Procedures

#### A. General Applicability

1. This policy governs all assets seized for the purpose of seeking forfeiture under Federal or State Forfeiture proceedings.
2. Assets include vehicles, trailers, currency, computers, contraband or other property.
3. The following general guidelines should be used when determining whether to seek forfeiture of assets:
  - a. Currency/Jewelry/personal property should be valued at:
    - 1) \$250.00 or more for State Seizure, or
    - 2) \$1,000.00 or more for Federal Seizure.
  - b. Vehicles must have an estimated value of \$2,500.00 or more (unless the vehicle is specially equipped to conceal or promote criminal activity or can be used as a training tool -- in either case there is no value limitation.)

#### B. Duties of Seizing Member

1. Seizure of Property

All property seized shall be properly secured in accordance with Department policy for evidence storage (Evidence and Property Policy, #12.01), until such time as the property is released to another agency or otherwise disposed of pursuant to applicable policy.

## 2. Cash/Currency Seizures

When reasonable to do so, cash should be hand counted with two members present immediately following seizure. If time or safety constraints make an immediate count impractical, currency shall be taken by two members, and placed in a sealed evidence bag(s) and properly sealed/marked. A count shall be made at the first available opportunity. Currency should be transferred to federal or state authorities who intend to seek forfeiture. Any currency not accepted by local or federal authorities for deposit in their accounts shall be kept secure in the sealed evidence bag(s) in a Post/Station safe until final disposition is made. In the event that the safe is not a viable option for maintaining the funds, the Department's Chief Financial Officer shall be contacted for purpose of locating a secure account to deposit the funds. All evidence tracking forms shall be properly completed.

## 3. Vehicles Subject to Seizure

Vehicles subject to forfeiture may be released to the agency that will pursue forfeiture. Vehicles maintained by DPS pending forfeiture shall be stored in a secure location where storage fees will not be assessed.

## 4. Jewelry or Other Valuables

Jewelry or other valuables shall be securely stored in the evidence/property room. All evidence procedures shall be followed. (Evidence and Property Policy, #12.01)

## 5. Reporting:

### a. Notification of Supervisors

Any Member involved in a seizure of assets for purposes of forfeiture shall notify their Post/Station Commander/Unit Supervisor immediately.

### b. Asset Forfeiture Tracking Sheet

- 1) An incident report and Asset Forfeiture Tracking sheet shall be completed on all seizures. Form DPS-1000
- 2) The seizing officer shall ensure that the following information is placed on the incident report and/or Tracking Sheet:
  - a) Identity and detailed description of all items seized including quantity, estimated value, and total amount of currency;
  - b) Party to whom the asset was released and the date of release;
  - c) Indication of the prosecutor (by name, court and telephone number) that will be processing the forfeiture action;

- d) DPS Asset Tracking Number obtained from the Department's Central Intelligence Office (CIO);
- 3) A completed copy of the Incident Report and Tracking Sheet with the above information shall be forwarded to the CIO via facsimile within ten days of the seizure, and
- 4) All asset seizures subject to forfeiture must be properly documented on the incident report.

#### 6. Reporting Disposition of assets

It is the responsibility of the seizing member to forward any information received regarding the disposition of the seizure to the CIO. If a court order is received a copy shall also be forwarded to Legal Services.

#### C. Post/Station Commander/Unit Supervisor

The Post/Station Commander/Unit Supervisor shall immediately notify the Troop/Region Commander/Section Supervisor of any involvement in significant seizures. Post/Station Commanders/Unit Supervisors are responsible for ensuring that the procedures outlined in this policy are followed.

#### D. Troop/Region Commander/Section Supervisor

The Troop/Region Commander/Section Supervisor shall notify Commanding Officer of any significant seizures within a reasonable time. Troop/Region Commanders/Section Supervisors are responsible for ensuring that the procedures outlined in this policy are followed.

#### E. Commanding Officer/MCCD Chief

The Commanding Officer/MCCD Chief shall ensure that the Lt. Colonel is notified of any significant seizures within a reasonable time. The Commanding Officer/MCCD Chief shall also notify the Commissioner of the Department of Public Safety of significant seizures in a timely manner.

#### F. Initiation of Forfeiture Proceedings

- 1. A member seizing assets subject to forfeiture shall ensure forfeiture proceedings are initiated. Contact shall be made with the appropriate prosecutor. The member, Post Commander/Unit Supervisor or Troop/Region Commander/Section Supervisor may initiate contact as directed by the Troop/Region Commander/Section Supervisor.
- 2. State Prosecutors - Local/state prosecutors shall be contacted in all cases where there is a possibility of state jurisdiction to conduct forfeiture proceedings. The state prosecutor having jurisdiction over the location where the property is seized shall be contacted regarding the possibility of state forfeiture proceedings.
- 3. The local/state prosecutor generally has jurisdiction to conduct forfeiture proceedings in cases where illegal substances (drugs) are located at or near the location of the asset seizure so that the assets seized are identified as drug related assets. The prosecutor in the county where the seizure was made shall be contacted to determine if the State Prosecutor will conduct the forfeiture proceedings. If a prosecutor has previously indicated that the state prosecutor's

office does not intend to conduct any forfeiture proceedings or a particular type of seizures, there is no need for additional contacts in each case.

4. Small seizures of cocaine or marijuana may be insufficient to confer state jurisdiction. If there is no evidence to suggest sale/trafficking and the amount of drugs seized involved possession of one gram of cocaine or less; or 4 ounces of marijuana or less, then the State Prosecutor has no jurisdiction to conduct the forfeiture. There is no requirement to contact the state prosecutor in these cases.
5. State prosecutors also have jurisdiction over forfeiture proceedings involving:
  - a. Profits from child sexual exploitation;
  - b. Materials used to manufacture, distribute or possess imitation controlled substances;
  - c. Motor vehicles operated by a habitual violator;
  - d. Proceeds from violations of Georgia Gambling provisions;
  - e. Property used to hijack motor vehicles;
  - f. Vehicle forfeitures for third conviction of pandering (pandering was done from a vehicle in each case);
  - g. Proceeds from pimping;
  - h. Proceeds from violations of Georgia RICO Act;
  - i. Profits from gang or subversive organization activity, and/or
  - j. Weapons.
6. Federal Prosecutors - The following categories of assets are subject to forfeiture in federal proceedings only. Only federal prosecutors have jurisdiction to proceed with the forfeiture (state forfeiture is not an option):
  - a. Drug Cases where no drugs are seized (or 1 gram of cocaine or less; or 4 ounces of marijuana or less) and there is no evidence that the asset seized was used for a transaction, purchase or sale of a controlled substance or marijuana.
  - b. Other Types of Forfeiture Cases which can only be conducted in Federal Courts:
    - 1) Violation of the Food Drug & Cosmetic Act for distribution of growth hormones;
    - 2) Federal Money laundering & bank fraud violations;
    - 3) Federal Gambling and Racketeering Crimes (covers transportation of gambling devices);
    - 4) Child pornography and Federal Obscenity Violations;

- 5) Forfeiture of automobiles involved in Auto and Electronic Communication Theft;
- 6) Illegal Export of War Munitions, arms, or other articles;
- 7) Property used to transport or make illegal manufacture, reproduction of copyrighted materials;
- 8) Smuggling of Aliens, and/or
- 9) Drug paraphernalia.

#### 7. State Forfeiture Proceedings

If the local prosecutor elects to conduct the forfeiture proceedings, the assets may be turned over to the local sheriff for retention during the proceedings. The prosecutor will be informed that pursuant to OCGA § 16-13-49(k), GSP relinquishes their interest in the property and does not seek a share of the asset proceeds.

#### 8. Federal Forfeiture Proceedings

If the State Prosecutor declines to present forfeiture proceedings or if the forfeiture can only be made under federal provisions, then the case will be presented for federal forfeiture action. The member seizing the assets shall immediately contact the appropriate District Forfeiture Liaison for assistance in processing federal forfeiture. Contact shall be made within seven days of the seizure.

#### 9. Contact with Prosecutors

Nothing in this policy shall be construed as limiting a member's ability to contact Federal or State Prosecutors for the purpose of sharing information regarding any case. Contact with federal prosecutors should be made, even in cases where the state prosecutor conducts the forfeiture proceeding, if there is an indication that the criminal activity originated outside of Georgia and the ultimate destination was outside of Georgia, so that Georgia was only a conduit for the transportation of the contraband. Also, contact should be encouraged in large cases which may be connected to criminal activity occurring on a multi-state level.

#### 10. Records of Forfeiture Proceedings

The Incident Report and Asset Tracking Sheet shall be completed accurately reflecting the identity of the state prosecutor accepting responsibility for the forfeiture action and identity of the agency accepting custody of the released assets and the date of these transactions. The location and jurisdiction of the court shall also be placed on the incident report or Asset Tracking Sheet. (For example: Fed. Dist. Ct. – Statesboro Division; or Clayton County Superior.) The CIO shall be notified by seizure number of any updating information regarding a seizure.

#### G. Federal District Forfeiture Liaison

- 1. The Commanding Officer shall designate one or more sworn members to act as a liaison with the Federal District prosecutors and federal authorities in each of

the federal districts. In addition to their assigned duties, the member shall assist members with processing federal seizure forms and shall maintain a good working relationship with their local federal forfeiture authorities.

2. The District Forfeiture Liaison is responsible for completing all DAG or other federal forms with the assistance of the seizing member. The appropriate federal forms shall be completed by the District Forfeiture Liaison within 14 days following the seizure. Forms shall be completed on behalf of DPS even if other agencies or officials have filed forms on our behalf. All original completed federal forms shall be delivered to the CIO within 14 days of the seizure.
3. Members of the Criminal Interdiction Unit (CIU) may elect to complete their own forms. In such instances, the CIU member is responsible for following the same procedures applicable to the District Forfeiture Liaison; including, timely and accurately filing of all federal forfeiture forms and updating the CIO.
4. Any case where assets are seized and presented for federal forfeiture, but GSP is not the seizing or initiating agency (but merely took part in an arrest/investigation/operation conducted by another law enforcement agency), the District Forfeiture Liaison shall ensure that the appropriate DAG or other federal forfeiture forms are processed, executed and filed in a timely manner on behalf of DPS for receipt of DPS percentage of any proceeds. Members participating in operations which could possibly lead to federal forfeiture sharing are responsible for notifying the appropriate Forfeiture Liaison in that area.
5. Any time a DAG-71 or other federal forfeiture form(s) is filed on behalf of GSP, the District Forfeiture Liaison shall ensure that a copy of the completed DAG-71 or other federal forfeiture form(s) is forwarded to the CIO for tracking purposes.
6. DAG and other Federal Forfeiture forms:
  - a. Federal Forms shall be filed with the proper federal authorities in a timely manner:
    - 1) Where DPS is seeking federal adoption of a DPS case, the appropriate requesting adoption form shall be filed with federal authorities within 30 days of the seizure, or
    - 2) Where DPS is requesting a share of proceeds in any federal case (adoption or federal; primary seizing agency or agency assist) the appropriate Federal Form (usually a DAG-71) shall be filed with federal authorities within 60 days of the seizure.
  - b. Any federal form shall have the DPS forfeiture tracking # placed on the form.
  - c. Any DAG-71 or other request for federal equitable sharing shall indicate the names of additional participating law enforcement agencies if any and if known.
  - d. Forfeiture proceeds are divided based on various factors. One of the most important factors is the amount of time an agency spends on the case. Therefore, all DAG and forfeiture forms shall completely and accurately reflect total department hours spent on any arrest or investigation. The seizing member will assist the District Forfeiture Liaison in ensuring that all agency time is accounted for.

## 7. Vehicles and Other Property

Generally, DPS will seek only a share of the proceeds from the sale of a vehicle or other seized property. However, DPS has the option of receiving forfeited vehicles and property. If the vehicle/property is subject to state forfeiture, DPS may receive the vehicle as a donation. If federal forfeiture action is taken, DPS should receive a share of the federal proceeds from the sale of the vehicle/property or may receive the vehicle itself. Any member involved in processing these cases, should ensure that the proper documentation is prepared and should maintain good communication with the prosecutor. A member involved in these proceedings may contact Legal Services and/or the Director of the CIU for assistance.

## H. Department's Central Intelligence Office

### 1. The SAFE Database:

- a. The Department's Central Intelligence Office (CIO) shall be maintained for the purpose, among others, of collecting, storing and retrieving information on assets seized for forfeiture. All asset forfeiture information shall be maintained on the Department's "Seized Asset Forfeiture Exchange" (SAFE). The information maintained on SAFE shall be confidential and privileged for purposes of public safety and ongoing investigations. However, information on the SAFE database shall readily be made available to all law enforcement and prosecutorial agencies for public safety purposes.
- b. It is the duty of the CIO to forward seizure information to the El Paso Intelligence Center (EPIC) in accordance with EPIC rules and guidelines.
- c. For the purpose of supervising the tracking of assets seized, the CIO will come under the immediate direction of the Criminal Interdiction Unit Commander. The Commander shall conduct audits and reviews of all applicable procedures governing the collection and distribution of asset information for possible updating and shall also audit and review the CIO's compliance with these procedures. The audit and review shall be conducted at least annually.
- d. The CIO will maintain on SAFE by case number the following information regarding an asset seizure for a period of no less than ten years:
  - 1) A log of the assets seized, including date, location identity of seizing member, description of asset, estimated value;
  - 2) The party to whom any asset was released;
  - 3) A log of disposition of all seized assets, and
  - 4) A log indicating forms filed to request federal forfeiture proceeds including date/location of filing.
- e. The information shall be maintained in two logs – one containing closed files and a second containing open files. "Open file" is an indication that no final disposition of assets has been made. No file shall be closed until a final disposition is recorded. A final disposition includes: proceeds ordered disbursed pursuant to court action, assets returned to a lawful owner, and assets declared abandoned property.

2. Asset Tracking Number - The CIO will assign, in numerical order, a case number for all asset seizure occurrences. In any seizure case, when a member processes the incident report, they will contact the CIO for a seizure number to be placed on the report. Records of assets pending forfeiture action shall be maintained as open pending files. Any records received by CIO relating to an individual case number shall be maintained together in one file. The cases shall be filed in sequential order with a separate section for each fiscal year.
3. Records of assets which have received final disposition shall be removed from the open case files to the closed files. These records shall be maintained in sequential order by date of disposition with a separate section for each fiscal year. Closed case files shall be maintained for a period of four years. Disposition shall be by court order or documentation from the seizing member that both the state and federal authorities declined to proceed with the forfeiture and the property had to be released to the lawful owner or processed as abandoned property.
4. The CIO will conduct an annual review of pending files more than 12 months old to determine the status of the pending case and whether further action is warranted.
5. The CIO shall receive all original DAG-71 Forms and other federal forms from the District Forfeiture Liaisons. The CIO is then responsible for obtaining any signatures needed; including the Commissioner's and agency attorney's signatures. Signatures should be obtained as soon as reasonably possible. The CIO is responsible for timely filing of all original federal forms in the appropriate federal court or office and notifying the District Forfeiture Liaison that filing has been completed. CIO shall also maintain a copy of all forms in the appropriate asset tracking file.

#### I. Financial Services Division

The Financial Services Division for the Department of Public Safety shall implement accounting procedures for maintaining and accounting for currency seizures and forfeiture proceeds.

##### 1. Forfeiture Asset Proceeds

###### a. Federal Proceeds

- 1) A separate interest bearing account for the deposit of federal asset forfeiture proceeds shall be maintained by the Fiscal Division. Checks for federal asset proceeds shall be deposited by the next business date of receipt.
- 2) "Annual Certification" of Federal Asset Proceeds Account
  - a) The Accounting Division shall be responsible for executing an "Annual Certification" of the Federal Proceeds account. The certification must account for:
    - i. Reporting all fund balances;
    - ii. Reporting the sharing of any proceeds including the case number, amount, date and identity of recipient of any proceeds;



iii. Interest accrued, and

iv. Identify expenditures (including date, amount, purpose)

- b) The Annual Certification along with a copy of the agency's "standard accounting procedures" utilized to track shared proceeds shall be submitted within 30 days of the start of the receiving agency's fiscal year to the U.S. Department of Justice, Criminal Division and the U.S. Department of Treasury, Executive Office for Asset Forfeiture. A copy shall also be provided to the U.S. Attorney for each of the Georgia districts.

## 2. Expenditure of Forfeiture Funds

All expenditures of forfeiture funds obtained through federal asset forfeiture will be in accordance with the guidelines set forth by the U.S. Department of Justice and the U.S. Department of the Treasury. Approval of the Commissioner or their designee is required prior to the expenditure of any funds obtained through the federal asset sharing program. The Finance Division shall take all necessary measures to ensure that expenditures meet federal and state laws, rules and guidelines prior to processing the expenditure request.

### a. Federal Equitable Sharing Agreement

A Federal Equitable Sharing Agreement shall be filed with the appropriate federal agency on behalf of DPS in accordance with federal rules and guidelines. It shall be the responsibility of the Finance Division to ensure that the Equitable Sharing Agreement is properly and timely filed. The Agreement must be filed a minimum of every three years or at the time of a change in the Commissioner who authorized the filing of the Agreement. The Agreement shall be filed with both the U.S. Department of Justice and the U.S. Department of Treasury. A copy shall also be provided to the U.S. Attorney for each of the Georgia districts.

### b. State Proceeds

Any state proceeds received shall be transferred to the state treasury. State proceeds received by DPS are not subject to sharing provisions.

## J. Legal Services Division

1. Asset proceeds received by any member shall be forwarded through the chain of command to the Adjutant. The Adjutant shall forward it to the Legal Services Director. Legal Services shall collect information needed to make all appropriate contacts regarding the sharing of proceeds, including verification that the appropriate Federal Report and Certifications are on file with the Federal agencies. Legal Services shall forward proceed checks to the Financial Services Division with a cover memorandum directing:
  - a. The funds may be deposited for use by DPS;
  - b. Hold the funds pending possible sharing of proceeds with local officials;
  - c. The transfer of funds to the state treasury, or

- d. How the funds should be disbursed and the names and addresses of the parties to receive the funds.
2. When funds are pending sharing decisions, it is the duty of Legal Services to update the Financial Services Division in writing and in a timely manner regarding the decision to share or waive participation.
3. A copy of all memorandums regarding the disbursement of proceeds shall be forwarded to CIO to be recorded on the SAFE data base.
  - a. Sharing Federal Proceeds
    - 1) Sharing with Local Law Enforcement: In any case where the Department receives 80% of the federal currency proceeds, Legal Services shall contact the local law enforcement agency head having primary jurisdiction in the location where the assets were seized and offer 35% of the 80% share.
    - 2) Sharing with local Prosecutor's Office: In any case where DPS receives any percentage of federal currency proceeds, the State Prosecutor in the county where the proceeds were seized shall be contacted by Legal Services and offered 10% of the total proceeds received by DPS.
    - 3) Certification of Ability to Accept Proceeds: Should there be a decision to share in the proceeds, the Head of the local agency or District Attorney shall be required to certify in writing that the proceeds will be utilized in a manner required by federal guidelines and that they are authorized to receive federal proceeds. DPS's offer to share proceeds will not be deemed accepted until receipt of the signed certification. In the event that an offer to share is accepted, the appropriate amounts will be passed through within two business days of receiving notification of the acceptance of the share offer and signed certification.

K. Return of Assets Not Forfeited

1. In the event that return of the assets is required, the seized property shall be released to the lawful owner immediately. The property may be returned to the owner or lawful representative. Owner may include a valid lien holder. Where property was held for forfeiture but no forfeiture resulted, no administrative or maintenance costs shall be assessed against the lawful owner. The Post/Station Commander of the Post where such property was originally seized shall assign the seizing member or other appropriate staff to attempt to locate the property owner in an effort to return the seized property.
2. The procedures for return of evidence shall be followed to document the release of all seized assets. In addition, prior to the return of any seized asset, the DPS-369 shall be completed. A copy of the completed form shall be forwarded to the CIO. All forms shall contain the Asset Tracking Number.
3. In the event that a lawful owner cannot be established, the asset shall be treated as abandoned property and held for the appropriate time necessary to establish the State's legal claim to abandoned property. If the local agencies elect to conduct abandonment proceedings, the assets may be released to the sheriff or prosecutor having jurisdiction over the location of the seizure. If DPS retains the abandoned property, Legal Services should be contacted regarding the

necessary procedures and length of retention governing abandoned property.

L. Donations

The Department may accept donations of asset forfeiture proceeds. The Department may also accept donations of forfeited property. The acceptance of any donated asset forfeiture proceeds shall be approved by the Commissioner or their designee. In the event that any member receives an offer for a donation, a report shall be made through the Chain of Command to the Office of the Commissioner or their designee. Donations will be processed before the Board of Public Safety in accordance with State law and Department policy.

M. Drug Task Force

Nothing in this policy should be construed as a prohibition against working with other law enforcement agencies or entering into agreements to create drug task force operations so long as the approved task force operates consistently with Federal and State law, regulations and guidelines.

N. Policy Compliance

The Commanding Officer/MCCD Chief shall be responsible for ensuring that all sworn members are familiar with and follow these procedures. The Commanding Officer/MCCD Chief will direct mandatory initial orientation for all staff and continuous training/updating of the asset forfeiture policy and procedures.